

Teamsters Union Local No. 378, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America and Olympia Automobile Dealers Association. Case 19-CB-3002

May 2, 1983

ORDER REMANDING PROCEEDING TO THE ADMINISTRATIVE LAW JUDGE

BY MEMBERS JENKINS, ZIMMERMAN, AND HUNTER

On August 6, 1979, the National Labor Relations Board issued a Decision and Order in this proceeding,¹ adopting Administrative Law Judge Harold A. Kennedy's finding that Respondent, Teamsters Union Local No. 378, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, violated Section 8(b)(3) of the National Labor Relations Act, as amended, by bargaining and executing a collective-bargaining agreement with Capitol Chevrolet Co., Interested Party, on August 25, 1977, without the consent of Olympia Automobile Dealers Association.

Thereafter, the Board petitioned the United States Court of Appeals for the Ninth Circuit for enforcement of its Order. In an opinion² dated March 24, 1982, the court deferred enforcement and remanded the case to the Board for further factual findings. The court disagreed, *inter alia*, with the proposition that "an agreement among employers to restrict withdrawals from the unit creates liability for a union that, unaware of such an agreement, negotiates with an improperly withdrawn employer."³ In this connection, the court noted that the Administrative Law Judge made no factual findings with respect to the existence of a "solidarity agreement" between the employer-members of the bargaining unit, or whether the Union had notice of such an agreement prior to the beginning of negotiations.

The Board notified the parties that it had decided to accept the court's remand and invited each party to file a statement of position. Thereafter, the General Counsel filed a statement of position and a motion to reopen the record for the limited purpose of admitting into evidence the bylaws of the Olympia Automobile Dealers Association.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record as a whole, the decision of the United States Court of Appeals for the Ninth Circuit remanding the proceeding, and the statement of position filed by the General Counsel.

As indicated above, the remand to the Board is for the limited purpose of making further factual findings as to the existence of a solidarity agreement among the Association's employer-members and whether the Union had knowledge of such an agreement prior to the start of negotiations. The General Counsel urges the Board to find on the basis of the record as it now exists that the employer-members of the Association delegated ultimate authority to negotiate on their behalf to the Association, and that the Union knew that such a delegation had taken place. In the alternative, the General Counsel requests that, if the Board determines that the record is insufficient to make the required findings, the record be reopened for the limited purpose of admitting the bylaws of the Association into the record. The General Counsel claims that the bylaws clearly show the extent to which the employer-members delegated authority for negotiations to the Association.⁴

After consideration of the matter, the Board is of the opinion that factual findings relating to the existence of an agreement among the Association's employer-members and whether notice of such an agreement had been sent to the Union prior to negotiations cannot be made on the basis of the evidence in the existing record. Accordingly, it has decided to remand the case to the Administrative Law Judge for him to reopen the record and reconsider his initial rulings, findings, and conclusions, and to make additional rulings, findings, and conclusions in light of the court's opinion.

It is hereby ordered that the record in the above-entitled proceeding be, and it hereby is, reopened and that a further hearing be held before Administrative Law Judge Harold A. Kennedy, such hearing to be limited to the introduction of evidence bearing on the issues remanded by the court's opinion.

IT IS FURTHER ORDERED that this proceeding be, and it hereby is, remanded to the Regional Director for Region 19 for the purposes of arranging such further hearing, and that said Regional Director be, and he hereby is, authorized to issue notices thereof.

IT IS FURTHER ORDERED that, upon conclusion of such supplemental hearing, Administrative Law Judge Kennedy shall prepare and serve upon the

¹ 243 NLRB 1086.

² *NLRB v. Teamsters, Local 378*, 672 F.2d 741 (9th Cir. 1982).

³ *NLRB v. Teamsters, Local 378*, above at 745.

⁴ In light of the conclusions reached herein, we find it unnecessary to rule specifically on the General Counsel's limited motion.

parties a Supplemental Decision containing credibility resolutions and findings of fact upon the evidence received pursuant to the provisions of this Order, conclusions of law, and recommendations;

and that, following the service of such Supplemental Decision upon the parties, the provisions of Section 102.46 of the Board's Rules and Regulations, Series 8, as amended, shall be applicable.